BEFORE THE APPEALS BOARD FOR THE KANSAS DIVISION OF WORKERS COMPENSATION

RICKY L. BOWMAN)
Claimant VS.	Darket No. 402 042
ACE HARDWARE MART	Docket No. 193,012
Respondent AND	}
AMERICAN FAMILY MUTUAL INSURANCE COMPANY Insurance Carrier	

ORDER

The respondent and insurance carrier appeal from a March 16, 1995 Preliminary Hearing Order entered by Administrative Law Judge Nelsonna Potts Barnes, granting claimant's request for medical treatment and payment of certain medical expenses.

ISSUES

In its application for review, respondent raises the sole issue of whether claimant's injury arose out of and in the course of his employment with respondent.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

For purposes of preliminary hearing, respondent admits that claimant sustained a work-related injury on November 23, 1993 to his low back as he was unloading boxes from a delivery truck in respondent's warehouse. However, respondent denies that medical treatment incurred after April 13, 1994 is attributable to claimant's injury. Specifically, respondent alleges claimant's present need for medical treatment is the result of subsequent, intervening injury or injuries not related to his employment with respondent. Respondent in particular points to an increase or exacerbation in claimant's symptoms following his promotion by a subsequent employer from a carry out/delivery position to a working supervisor. The supervisor position required claimant to work standing on a hard surface preparing food during his entire shift.

Claimant denies subsequent accident or intervening injury. He testifies that he was never symptom free following his work-related accident with respondent, but did have periods of improvement followed by periods of increased symptomatology. He relates all his symptoms to his November 23, 1993 accident.

K.S.A. 44-534a confers upon the Appeals Board the authority to review preliminary findings, which addresses the above enumerated issue. In cases involving subsequent, intervening injury, the issue of which accident gave rise to the claimant's present need for medical treatment, or whether claimant, in fact, sustained a subsequent, intervening injury

is one which encompasses both nature and extent of disability as well as accident arising out of and in the course of employment. In such circumstances, the Appeals Board has found the issue to be jurisdictional, which permits review at this stage of the proceedings.

Based upon the evidence presented, and for purposes of preliminary hearing, the Appeals Board finds that it is more probably true than not true that claimant's ongoing need for medical treatment and, in particular, his treatment since April 13, 1994, which is the period in controversy, is the result of his work-related accident on November 23, 1993. In so finding, the Appeals Board also finds from the testimony of the claimant, together with the medical records and reports in evidence, that claimant's need for medical treatment is not the result of any subsequent, intervening injury. It is the finding of the Appeals Board that claimant's present condition does stem from the admitted November 23, 1993 accident and, therefore, did arise out of and in the course of the claimant's employment with the respondent.

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the March 16, 1995 Order by Administrative Law Judge Nelsonna Potts Barnes, should be and is hereby affirmed in all respects.

II IS SO ORDERED.
Dated this day of June 1995.
BOARD MEMBER
BOARD MEMBER
BOARD MEMBER

c: Frances A. Hartman, Wichita, KS William L. Townsley III, Wichita, Ks Nelsonna Potts Barnes, Administrative Law Judge George Gomez, Director